

FEDERAL COMMUNICATIONS

Federal Communications Commission

DA 98-2061

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-187
Table of Allotments,)	RM-9371
FM Broadcast Stations.)	
(Des Moines, Iowa, and Bennington,)	
Nebraska))	

NOTICE OF PROPOSED RULE MAKING**Adopted: October 7, 1998****Released: October 16, 1998**

Comment Date: December 7, 1998

Reply Comment Date: December 22, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed jointly by Triathlon Broadcasting of Omaha Licensee, Inc., licensee of Station KTNP, Bennington, Nebraska, and Saga Communications of Iowa, Inc., licensee of Station KIOA-FM, Des Moines, Iowa ("petitioners"). Petitioners request the substitution of Channel 227C3 for Channel 227A at Bennington and the substitution of Channel 227C1 for Channel 227C at Des Moines, and the modification of their station's license to specify Channel 227C3 and 227C1, respectively.¹ Petitioners state that they will each file an application for their respective channels, if allotted.

2. Petitioners state that the substitution of Channel 227C3 for Channel 227A at Bennington will enable Station KTNP to increase the population it serves by 89,085 people, or 16.4%. Further, they state that this increase in population would mostly occur outside the Omaha Urbanized Area as the station already serves the entire Urbanized Area with a 60 dBu signal. As to the downgrading of Station KIOA-FM from Channel 227C to Channel 227C1, they state that the area encompassed by the station's 60 dBu contour would be reduced by 5.8% and the population served would be reduced by 6,550 people, leaving the station with a total coverage population of 637,596 persons. They state that none of the people losing service would be left unserved or underserved as a result in Station KIOA-FM's channel change. According to the petitioners, all of Station KIOA-FM's licensed community will continue to receive the required 70 dBu, city-grade, coverage.

¹ An Order to Show Cause directed to Saga Communications of Iowa, Inc., is not necessary since it has agreed to the modification of Station KIOA's license.

3. Channel 227C1 can be allotted to Des Moines in compliance with the Commission's minimum distance separation requirements and utilized at Station KIOA-FM's licensed site. Channel 227C3 can be allotted to Bennington with a site restriction of 15.2 kilometers (9.4 miles) east to accommodate petitioners' desired transmitter site.²

4. We believe petitioners' proposal warrants consideration since the allotment of Channel 227C3 to Bennington, Nebraska, could provide the community with a wide coverage area service and enable Station KTNP to expand its service area. In accordance with Section 1.420(g) of the Commission's Rules, we also propose to modify Station KTNP's and Station KIOA-FM's licenses to specify operation on Channels 227C3 and 227C1, respectively. We shall not accept competing expressions of interest in the use of Channel 227C3 at Bennington or require the petitioners to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u>
		<u>Proposed</u>
Des Moines, Iowa	227C, 235C, 247C1, 262C, 273C, 298C1	227C1, 235C, 247C1, 262C, 273C, 298C1
Bennington, Nebraska	227A	227C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before December 7, 1998, and reply comments on or before December 22, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

² The coordinates for Channel 227C1 at Des Moines are 41-37-54 North Latitude and 93-27-24 West Longitude. The coordinates for Channel 227C3 at Bennington are 41-20-43 North Latitude and 95-58-33 West Longitude.

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.